

COMMUNITY AFFAIRS

DIVISION OF CODES AND STANDARDS

Uniform Construction Code

Barrier Free Subcode

Proposed Amendment: N.J.A.C. 5:23-7.5

Authorized by: Susan Bass Levin, Commissioner, Department of Community Affairs

Authority: N.J.S.A. 52:27D-123

Proposal Number: PRN 2003-242

Calendar: See Summary below for explanation of exception to calendar requirement.

Submit written comments by to:

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SUSAN BASS LEVIN
Commissioner

The agency proposal follows:

Summary

On May 5, 2003, P.L. 2003, c.72 was signed into law. It provides that the rules for accessibility for multifamily residences are to be adopted pursuant to the Uniform Construction Code Act, N.J.S.A. 52:27D-119 et seq., rather than the Handicapped Access Law (HAL), N.J.S.A. 52:32-4 et seq. Accessibility requirements for all other public buildings continue to be adopted pursuant to the HAL. The significance of this change is that the HAL requires all large buildings (defined as those over 10,000 square feet) having floors exceeding 3,000 square feet to serve those floors with an elevator. The UCC contains no such provision but, instead, leaves all such requirements to the rules adopted by the Commissioner. The new law resulted from a decision rendered by the Appellate Division of the Superior Court in *New Jersey Association of Centers for*

Independent Living; D.I.A.L., Inc.; and the Community Health Law Project v. the New Jersey Department of Community Affairs, Docket Number A-4432-998T3, which was issued on April 6, 2001. The lawsuit contested the earlier adoption of revisions to the Barrier Free Subcode (N.J.A.C. 5:23-7) that eliminated the requirement for elevators in multifamily residential buildings. In its decision, the Appellate Division directed the Department of Community Affairs to promulgate rules applying to multifamily residential buildings the distinction between accessibility requirements for large (10,000 square feet or greater) or small (less than 10,000 square feet) buildings that was contained in the Handicapped Access Law (N.J.S.A. 52:32-4) and that had, theretofore, been applied only to commercial buildings. The Department of Community Affairs did so; that rule was published as an adoption in the *New Jersey Register* on August 5, 2002.

In addition to ruling that the large building/small building distinction found in the HAL applied to multifamily residential structures, the Appellate Division commented on the Department's reasons for having eliminated the elevator requirement for multifamily homes. First, the decision quoted the Department's stated intent:

The elevator requirement that has existed in the Barrier Free Subcode was intended to provide a choice in the types of dwelling units, but the elevator requirement imposed so much additional expense on low rise, low density housing that developers sought to evade it by seeking loopholes that took their projects out of the requirements...By eliminating the cost disincentive, the Department hopes that developers and design professionals will stop seeking loopholes and the result will be more accessible units.

The Court then declared:

Accordingly the Commissioner made a specific finding that the elevator requirement thwarts general compliance with the subcode by encouraging developers to take drastic steps to remove projects from the Subcode's jurisdiction to avoid the costly installation of elevators in low-rise, low density projects. Certainly the Commissioner has the authority to study the effect of the UCCA [Uniform Construction Code Act] upon the cost of building construction and the effectiveness of the provisions for insuring the health, safety and welfare of the people of this State. However, *although the reasoning and conclusions of the Commissioner may be valid*, the plain language of N.J.S.A. 52:32-5 requires 'elevators or other means of access for the physically handicapped between floors, except floors which contain only mechanical equipment or floors which contain less than 3,000 square feet total floor area in buildings with a total gross enclosed floor area of 10,000 square feet or more.' The language of the statute is clear and unambiguous, and cannot be changed by adopting a regulation that fails to effectuate, or bypasses, that requirement. *Clearly, the intent of the Commissioner must be effectuated through action by the Legislature, should it choose to act.* (Emphasis added)

The Legislature has acted and the Governor has concurred. This proposal codifies the provisions of P.L. 2003, c.72.

Specifically, the provisions requiring elevators in large multifamily buildings are proposed for deletion from N.J.A.C. 5:23-7.5, which covers residential buildings other than Use Group R-1 (hotel and motels). The effect of this deletion will be to have no arbitrary threshold at which an elevator must be provided in a multifamily residential structure. Like the Federal Fair Housing Amendments Act/1988, this rule would allow the provision of an elevator to be market-driven. It is expected that by eliminating the cost disincentive of providing an elevator, builders in the State of New Jersey will once again construct low-rise, low density apartment buildings that provide accessibility.

In addition, the reference to "Use Group" is changed to "Group" and the reference to Use Group R-4 is deleted to reflect the recent adoption of the International Building Code/2000. Group R-4 in the International Building Code/2000 is a therapeutic residence in a single dwelling unit. Finally, several grammatical corrections are made in N.J.A.C. 5:23-7.5(c)2.

As the Department has provided a 60-day public comment period on this notice of proposal, this notice is exempted from the rulemaking calendar requirement, pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

This rule is expected to have a positive social impact. By eliminating the cost disincentive of providing an elevator in low rise, low density multifamily residential structures, a greater variety of multifamily housing options should become available to people with disabilities.

Economic Impact

This rule is expected to allow for a greater variety of multifamily housing designs, but it is not expected to impact the volume of construction undertaken. Therefore, it is not expected to have an economic impact.

Federal Standards Statement

No Federal standards analysis is required because these amendments are not being proposed in order to implement, comply with, or participate in any program established under Federal law or under a State law that incorporates or refers to Federal law, standards, or requirements. Although Federal and State requirements for accessibility are separate, this rule is expected to have a positive impact by providing the same scoping requirements for the accessibility of multifamily residential structures in State law as exist in the Federal Fair Housing Amendments Act/1988.

Jobs Impact

Because this rule impacts the kinds, and not the volume, of multifamily housing likely to be constructed, the Department does not anticipate that any jobs will be created or lost as a result of these proposed amendments.

Agriculture Industry Impact

The Department does not anticipate that the proposed amendments would have an impact on the agricultural industry.

Regulatory Flexibility Statement

The Department does not anticipate that the proposed rule amendments would have an impact on "small businesses," as defined by the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. These amendments would not impose any recordkeeping, reporting, or compliance requirements on small businesses. The proposed amendment eliminates a threshold at which an elevator must be provided in a multifamily residential building.

Smart Growth Impact

Due to the subject matter of this proposal, which addresses the kinds of multifamily dwellings likely to be constructed and does not address whether construction may take place, the Department does not expect that it would have an impact on achievement of "smart growth" or the implementation of the State Development and Redevelopment Plan.

Full text of the rule proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

5:23-7.5 Residential buildings other than [Use] Group R-1

[(a) Small buildings, defined as those with a total gross enclosed floor area of less than 10,000 square feet between exterior walls or firewalls, shall provide accessible building features as required by N.J.A.C. 5:23-7.4 and subsections (d) and (e) below.

1. For the purposes of applying this subsection, firewalls having openings allowing for human passage shall not designate separate buildings.

(b) Large buildings, defined as those with a total gross enclosed floor area of 10,000 square feet or more between exterior walls or firewalls, shall provide accessible building features as required by N.J.A.C. 5:23-7.4 and subsection (d) below.

1. For the purposes of applying this subsection, firewalls having openings allowing for human passage shall not designate separate buildings.

(c)] **(a)** Buildings of [Use] Group R-2[, **or** R-3[, or R-4] with four or more dwelling units in a single structure shall comply with the provisions of this subchapter.

1. (No change.)

2. When being applied to a dwelling unit, the terms "accessible" and "adaptable" shall be interchangeable and shall mean that the dwelling unit has an accessible entrance; [and] **an** accessible interior route into and throughout the dwelling unit, including maneuvering space at doors; and required clear floor spaces and reach ranges in all rooms. The dwelling unit shall have either the adaptable features specified in [(f)] **(d)** below in the kitchen and bathroom or a fully accessible kitchen and bathroom as provided in the ICC ANSI **A**117.1-98 standard.

3. (No change.)

[(d)] **(b)** (No change in text.)

[(e)] **(c)** In a building without elevator service, each ground floor dwelling unit shall be required to have an accessible entrance, an accessible route into and throughout the entry level of the dwelling unit, an adaptable kitchen, and one adaptable toilet and bathing facility on the accessible route.

1. (No change.)

2. In a building without elevator service and with a building entrance that serves more than one dwelling unit, all multi-story dwelling units with a ground floor entrance shall be accessible as provided in [(d)] **(b)** above.

Renumber (f) - (i) as **(d) - (g)** (No change in text.)